

AUG 26 1975

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Mr. James B. Alexander
Campbell & Bouchillon
Attorneys at Law
P. O. Box 186
Covington, Georgia 30209

Dear Mr. Alexander:

This is in reference to your submission of Act No. 514, Georgia Laws, 1967, amending the City Charter of Covington, Georgia (Sections 24, 27 and 47), to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your completed submission was received on June 30, 1975.

We have considered the submitted plan along with Census Bureau data and information and comments from interested parties. The Attorney General does not interpose an objection to Sections 1, 2, and 4 and to parts (d) and (e) of Section 3, of Act 514, which amend Sections 24, 27, and 47 of the Covington City Charter (1962). With regard to the provisions of part (d) of Section 3, it is our understanding that the Paupers Affidavit may be used instead of the payment of the \$100 qualifying fee. We feel a responsibility, however, to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In considering Parts (a) and (b) of Section 3 of Act 514, which amends Section 47 of the Covington City Charter (1962), our analysis reveals that, even though blacks constitute 44% of the population (1970 Census) and about 35% of the registered voters of the City of Covington, no black has ever been elected to the city council. We further note that these provisions

require a majority vote requirement, numbered posts, staggered terms, and an at-large system of electing the mayor of Covington and city council members.

Recent court decisions suggest that if an at-large voting system is employed under circumstances such as those existing in the City of Covington, the utilization of numbered posts and majority vote requirements will operate to minimize or dilute the voting strength of the minority and, thus, have an invidious discriminatory effect. See White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971); Zimmer v. McKeithen, 485 F. 2d 1297 (5th Cir. 1973).

In view of these court decisions and on the basis of all the available facts and circumstances, the Attorney General is unable to conclude, as he must under the Voting Rights Act that Parts (a) and (b) Section 3 of Act 514 will not have a racially discriminatory effect on voting. Therefore I must interpose an objection to the implementation of Parts (a) and (b) Section 3 of Act 514 (1967).

We have noted that these changes were made in 1967 and have been implemented at annual elections since the election held on the first Monday in December, 1967. We also note, that under the system of elections which are provided for by Act 514, three of the six members of the City Council are elected for two year staggered terms, every two years, and that the elections for Posts 1, 2, and 3 will occur in December of 1975 and for Posts 4, 5, and 6, will occur in December of 1976.

Because changes in voting procedures which are the subject to an objection by the Attorney General are legally unenforceable and because all of the existing members of the City Council were elected under a system of elections which had not met the preclearance requirements of the Voting Rights Act of 1965, it will be appropriate for the City of Covington, in holding the election in December of 1975 under the provisions of City Charter existing prior to 1967, to hold the election for all six positions on the Council in December of 1975. New elections are appropriate when there has been a failure to submit changes under Section 5 and when the changes are found to deny rights by the Fifteenth Amendment. See Perkins v. Matthews, 400 U.S. 379, 395 (1971). That changes such as majority vote requirements and the use of seats or posts are covered is well established, Allen v. State Board of Elections, 393 U.S. 544 (1969). The Court in Allen indicated that the Voting Rights Act was to be given the broadest possible scope to reach, "any state enactment which altered the election law of a covered State in even a minor way." page 566. In this regard, it would be appreciated if you could advise me within two weeks of the steps the City is prepared to take to insure compliance with the requirements of the Voting Rights Act.

Of course, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this section of the Act neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. However, until such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render unenforceable Parts (a) and (b) Section 3 of Act 514, Georgia Law, 1967.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division